

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

DAVID VANN,

Plaintiff,

v.

THE CITY OF ROCHESTER, a municipal entity,
POLICE OFFICER MATTHEW DRAKE, IBM #1956,
POLICE OFFICER STEVEN MITCHELL, IBM #2134,
POLICE OFFICER JEFFREY KESTER, IBM #2230,
POLICE OFFICER CHRISTOPHER J. BARBER, IBM
#1949, POLICE OFFICER DAVID E. KEPHART, IBM
#2074, INVESTIGATOR TOMESHA ANGELO, IBM
#1665, TECHNICIAN STEPHANIE MINTZ, IBM
#2496, SERGEANT DANIEL J. ZIMMERMAN, IBM
#295, Police Officers "John Does 1-6" (whose names
are currently unknown, but who are described in the
complaint and in pictures attached to the complaint as
exhibits), Police Officers "John Does 7-12" (names
and number of whom are unknown at present), and
other unidentified members of the Rochester Police
Department,

Defendants.

**AFFIRMATION IN SUPPROT
OF MOTION FOR LEAVE TO
AMEND**

Case No.: 18-cv-06464

JOHN M. CAMPOLIETO, an attorney duly admitted to practice law before the
Court, makes this Affirmation under penalty of perjury:

1. I am an attorney with the City of Rochester Department of Law, attorneys
for Plaintiff. I am admitted to practice law before the courts of the State of New York.

2. I respectfully submit this Affirmation in support of Defendants' Motion for
Leave to File an Amended Answer.

3. On May 16, 2018 Plaintiff filed a Complaint in this matter with the Monroe

County Clerk under Index No. 2018003491, which sought damages from the City of Rochester Police Department from the arrest of Plaintiff on September 4, 2015. The City removed this action to Federal Court on June 20, 2018. The City Defendants made a FRCP Rule 12(e) motion on July 16, 2018, an Amended Complaint was filed on August 30, 2018 and the City made a Motion to Dismiss on November 7, 2018. See Federal ECF Docket Report attached as Exhibit A.

4. The Motion to Dismiss was granted in part and denied in part on March 25, 2019.

5. Finally, the City Answered the Amended Complaint on April 12, 2019. City Defendants' Answer attached as Exhibit B.

6. On November 26, 2019 the scheduled the date for amendments to the pleadings to be January 31, 2021. On February 1, 2021 (as January 31, 2021 was a Sunday, February 1, 2021 was the next business day) the City sent a so ordered letter to the Court asking until February 14, 2021 to file a motion for leave to amend its Answer. See Exhibit A.

7. City Defendants now seek leave to file an amended answer, adding a defense to the Monell claim which asserts a policy and custom of the Rochester Police Department to violate constitutional rights of citizens. See copy of Proposed Amended Answer asserting affirmative defenses Twelve and Thirteen, annexed hereto as Exhibit C.

8. These defenses assert that the City has no custom or policy, did not violate 42 USC 1983 and that the City did not authorize, condone or permit improper conduct through negligent hiring or training. The claims that these defenses relate to were

litigated during the motion to dismiss and are currently in discovery.

9. FRCP Rule 15(a)(2) provides that leave to amend a pleading shall be freely given upon such terms as may be just.

10. City Defendants submit that amendment to its Answer as set forth herein are in the interest of justice and should be granted. Additionally, said amendment relates back to the Motion to Dismiss where the defenses were argued and litigated, there is no surprise as to these defenses and no prejudice to the Plaintiff.

WHEREFORE, based upon the foregoing, Plaintiff respectfully requests that the Court grant the City Defendants its Motion for leave to amend its Answer.

Dated: February 12, 2021

TIMOTHY R. CURTIN,
CORPORATION COUNSEL

/s/ John M. Campolieto

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